

STATE OF MICHIGAN
COURT OF APPEALS

DONALD L. HARING,

Plaintiff-Appellant,

v

UNITED AUTO WORKERS INTERNATIONAL
UNION,

Defendant-Appellee,

and

UNITED AUTO WORKERS LOCAL 600,

Defendant.

UNPUBLISHED

July 7, 2009

No. 285931

Ingham Circuit Court

LC No. 07-001357-CZ

Before: O’Connell, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant’s¹ motion for summary disposition for lack of jurisdiction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The facts underlying the jurisdictional issue are not in dispute. Plaintiff was a civil service employee and a member of the UAW. When plaintiff was fired from his position at the Michigan School for the Deaf and Blind he filed a grievance, and defendant represented him throughout the proceedings. The case went to binding arbitration and the arbitrator ruled in favor of the employer. Plaintiff then filed suit in the circuit court, alleging that defendant, through its acts and omissions, breached its duty to fairly represent him in the grievance proceedings, resulting in damages to him. Defendant moved for summary disposition on several grounds, including lack of subject-matter jurisdiction, claim barred by the agreement to arbitrate, failure to state a claim, and no genuine issue of material fact, MCR 2.116(C)(4), (7), (8), and (10),

¹ Defendant United Auto Workers Local 600 was dismissed by stipulation. “Defendant” in this opinion refers to United Auto Workers International Union (“UAW”).

respectively. The circuit court agreed that it lacked subject-matter jurisdiction to hear plaintiff's claim, and granted the motion on that basis. The court did not address the other grounds raised.

When reviewing a circuit court's decision on a motion brought under MCR 2.116(C)(4), we decide the jurisdictional question de novo, but consider the pleadings and any affidavits or other documentary evidence submitted by the parties to determine if there is a genuine issue of material fact. *Toaz v Dep't of Treasury*, 280 Mich App 457, 459; 760 NW2d 325 (2008).

The Michigan Constitution grants the Michigan Civil Service Commission (MCSC) "plenary and absolute powers in its field." Const 1963, art 11, § 5; *Viculin v Dep't of Civil Service*, 386 Mich 375, 398; 192 NW2d 449 (1971); *Bonneville v Michigan Corrections Org, Service Employees Int'l Union, Local 526M*, 190 Mich App 473, 475-476; 476 NW2d 411 (1991). These powers include the authority to "make rules and regulations covering all personnel transactions, and regulate all conditions of employment in the classified service." Const 1963, art 11, § 5.

There is little question that plaintiff's complaint, regardless of how it is framed, alleges an unfair labor practice. *Bonneville, supra* at 475 ("A breach of [the] duty of fair representation is considered to be an unfair labor practice"); *Goolsby v Detroit*, 419 Mich 651, 661-665; 358 NW2d 856 (1984). The MCSC rules provide:

An employer, employee, or labor organization may file an unfair labor practice complaint with the state personnel director. The director has the authority to investigate, obtain facts, statements, or affidavits, make determinations of violations, and assess appropriate penalties. [Rule 6-13, available at http://www.michigan.gov/mdcs/0,1607,7-147-6877_8155-73229--,00.html#6_12, accessed June 15, 2009.]

Thus, the MCSC has the power to adjudicate unfair labor practices. Where an administrative grievance procedure is provided, exhaustion of that remedy, except where excused, is required before the circuit court can review the case. MCL 24.301; *Michigan Supervisors Union OPEIU Local 512 v Dep't of Civil Service*, 209 Mich App 573, 576-577; 531 NW2d 790 (1995); *Bonneville, supra* at 476. A plaintiff may seek judicial review of a nonfinal agency decision only when a final agency decision or order would not provide an adequate remedy, or if pursuing the administrative remedy would be futile. *Michigan Supervisors Union OPEIU Local 512, supra*; *Bonneville, supra*.

Plaintiff asserts that he is not required to exhaust all administrative remedies under case law; however, he cites inapplicable cases that do not involve the MCSC, where the claims were constitutional only, or where the administrative remedy was inadequate, and therefore the claims were not subject to MCSC jurisdiction. In contrast, the cases cited by defendant are directly on point, particularly *Bonneville*.² Where the MCSC has authority to exercise power, its jurisdiction

² In *Bonneville*, the plaintiffs were state employees who filed suit in the circuit court, alleging that their union breached its duty of fair representation when it decided not to arbitrate their

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is exclusive. *Viculin, supra*. Plaintiff also argues that no one at the UAW knew how to handle a claim like his, and cites depositions of UAW employees that he claims support this assertion. Regardless of what UAW employees may have stated, the MCSC's Rule R 6-13 clearly provides that his claim should have been filed with the state personnel director. Here then, as in *Bonneville, supra* at 477, "[b]ecause plaintiff[] did not show that [his] failure to exhaust administrative remedies was excused, the circuit court properly determined that it lacked subject-matter jurisdiction."

We affirm.

/s/ Peter D. O'Connell
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio

(...continued)

grievance. *Bonneville, supra* at 474-475. This Court affirmed the circuit court's decision that it could not hear the case because the MCSC had exclusive jurisdiction. *Id.* at 477.